# Has Britain Sacrificed Canada's Interests

## ADDRESS DELIVERED BY MR. JUSTICE LONGLEY, BEFORE THE CANADIAN CLUB AT HALIFAX, APRIL 6th, 1909.

For many years there has been a constant and reiterated assertion in Canada, that important interests have been sacrificed by the imperial government, either from incompetence or subservience to the United States. On public occasions we are accustomed to hear patriotic Canadians deplore the humiliating losses to which this country has been subjected by the stupidity of British diplomists. For many years we have heard from all quarters the declaration, that through imperial weakness we were robbed of our just rights on the Alaska boundary arbitration. And very recently at a dinner in Montreal, at which Mr. James Bryce, the British ambassador at Washington, was a guest, an enthusiastic Canadian took advantage of the occasion to declare, that while Canada has great territories, he wanted Mr. Bryce to understand that she had none to give away. This was received with deafening applause, designed to impress the imperial representative with the fact that Canada was going to submit to no more imperial complacency.

### WHOLLY UNJUST AND WITHOUT FOUNDATION.

Such a charge is a serious one, under any circumstances, and now that Canada is becoming a large important and almost entirely self-governing country, claiming the right to make or take part in the making of our own treaties and bargains, the question is one of moment, and ought to be carefully looked into. The object of this paper, is to show that the charge is wholly unjust and without any substantial foundation.

I propose to briefly review the incidents connected with each of the important treaties and arbitrations, in which Canadian interests have been involved, and attempt to demonstrate that in none of them has incompetence been displayed by the imperial government, nor is there a trace of a disposition, to make Canadian interests subservient to the United States or any country whatsoever.

### DISCUSSION OF TREATY OF 1783.

It can scarcely be claimed that Canada was directly concerned in the treaty of peace and independence between Great Britain and the United States, concluded in 1783. Outside of the thirteen revolted states there were settlements in Acadia, and along the St. Lawrence river, mostly French. The latter was designated "Canada" and had been acquired by conquest in 1759. The boundaries of French Canada was extensive and reached as far as the Mississippi and Ohio rivers. The war of suppression had been carried on for years, under pressure from the King, and repeated disasters were making it unpopular with the English people. The great Lord Chatham was denouncing it amid the plaudits of the nation. The surrender of Cornwallis

at Yorktown had given the coup de grace to Lord North's administration and another was formed under the Marquis of Rockingham with such advanced liberals as Charles Fox and Lord Shelburne as ministers. Popular opinion demanded and the new ministers were anxious for peace, and the foreign secretary took steps to negotiate at Paris to this end. Lord Shelburne selected as the British negotiator, a Mr. Oswald, who was a successful Scotch merchant, whose wife had large estates in America and the West Indies, and who, it was believed would be agreeable to Mr. Franklyn. As the American congress sent John Adams and John Jay, two very able men to cooperate with Mr. Franklyn in the negotiation, it is scarcely deniable that he was overmatched. Mr. Fox did not approve of Oswald, and had Thomas Grenville as his agent in Paris. These negotiations are a long story.

## THE STORY OF THE NEGOTIATIONS.

Franklyn suggested that Canada and Acadia should be handed over to the new commonwealth, and Oswald was quite complacent about it; but in the end the British government rejected this proposition. Mr. Henry Strachey was sent to complete negotiations, and it only remained to accept the independence of the thirteen states and to fix the boundaries. The boundaries agreed upon in the Treaty of Paris, 1783, were not strictly the boundaries between the British possessions and the United States. France was really a party to the treaty, as it was negotiated under the eye and with the full knowledge of the French government. It was contemporaneous with the treaty of peace signed between Great Britain and France at Versailles the same day. The boundaries fixed in that treaty were the boundaries of the United States, and represented the area to which that nation was to be confined. The eastern and northern boundaries represented the demarcation between the United States and British territory. France and Spain held large areas on the west and south of the original thirteen states, and Great Britain could not have undertaken to fix the limitations of the United States, in these directions. The boundaries of the United States were, therefore, made in such a form, as not to interfere with territory held by France and Spain.

## ADJUSTED SO THAT TERRITORY WAS AFFECTED.

But they were adjusted in such a way that part of what was Canadian territory under the treaty with France in 1763, and by the Quebec act of 1774, was added to the territory of the original thirteen states. It was urged by the American negotiators that to have confined the United States to the actual boundaries of the thirteen states, would have left them without room for growth and expansion, and, therefore, concessions of western territory were granted, as far north as the lakes. But it must be borne in mind that this land was entirely unsettled and its potential value could not then be realized, as fully as events have since demonstrated. The St. Croix river was the extreme eastern boundary, thence from its head waters to run due north to the height of land, dividing the waters of the Atlantic from those of the St. Lawrence; thence along the Highland extended to the Connecticut river at forty-five degrees, north latitude; thence to run due west to the St. Lawrence river; thence the St. Lawrence river and the Great Lakes were the boundaries. From Lake Superior the line was to run west to the Lake of the Woods; thence west to the Mississippi river, the head waters of which were then supposed to reach a point north of this line. Subsequently it was discovered that the head waters of the Mississippi did not extend as far north as the Lake of the Woods, and, by subsequent treaty the boundary was to extend westerly on the forty-ninth parallel to the Rocky Mountains.

## THAT PART WHICH EXTENDED TO THE OHIO.

Complaint has always been made that the British government did not insist upon holding that part of New France which extended to the Ohio and Mississippi rivers. If this had been insisted upon, the present great states of Ohio, Indiana, Illinois, Michigan, Wisconsin and part of Minnesota would have belonged to Canada. It seems to me very useless to revert to these old matters. The United States negotiators would not agree to these boundaries. They urged that in parting from the old country, it was in every way desirable they should separate on good terms.

They pointed out that this western territory was essential to their growth and expansion. They could scarcely hope to develop international proportions if their boundaries were confined to the strip of states along the Atlantic ocean. British commissioners, perhaps too complacently, conceded a boundary which extended to the Great Lakes. But it was done a hundred and twenty-five years ago, and to moan over it is idle. The largest and possibly the best part of the continent was left. Canada has a territory nearly as large as Europe and ample for all the growth and expansion she can achieve in a cycle of ages, and we can very well afford to let the past rest. Let us develop what we have and look to the future.

## THE ASHBURTON TREATY OF 1842.

This is the treaty concerning which the feeling is almost universal that Canada's interests were sacrificed by the ineffectiveness of British diplomacy, and therefore it will, with difficulty, be believed that a careful study of the whole question will demonstrate that it was the United States that suffered and Canada which gained. Yet, in spite of the long cherished convictions which have been held on this point, I shall venture to present the other idea.

The difficulties concerning the eastern and north-eastern boundaries of the United States arose from the interpretation of the treaty of 1783. In this is found the following clause:

> "Article 2. And that all disputes which might arise in future on the subject of the boundaries of the said United States may be prevented, it is hereby agreed and declared that the following shall be their boundaries, viz.: From the north-west angle of Nova Scotia, namely, that angle which is formed by a line drawn due north from the source of the St. Croix river to the highlands; along the said highlands which divide those rivers which empty themselves into the River St. Lawrence, from those which fall into the Atlantic ocean to the north-western most head of Connecticut river; thence east by a line which is to be drawn along the middle of the River St. Croix from its mouth in the Bay of Fundy, and from its source directly north to the aforesaid highlands, which divide the rivers which fall into the Atlantic ocean from those which fall into the River St. Lawrence."

Let it be borne in mind that the boundaries fixed by this treaty were not new, but were in the exact phraseology which had been already fixed by imperial act at a time when all the sections concerned were colonies of Great Britain. Maine was then a part of the province of Massachusetts, and Nova Scotia included New Brunswick. The Quebec act of 1774 fixed the southern boundaries of Quebec as follows:—"On the south by a line from the Bay of Chaleur along the highlands which divide the rivers that empty themselves into the River St. Lawrence from those which fall into the sea, etc."

In the charter of Nova Scotia to Sir William Alexander in 1621 the western boundary of the province was the St. Croix river to its source and a line thence northerly to the nearest water falling into the St. Lawrence.

## EXTENDED TO ST. LAWRENCE AT THE FIRST.

Originally, the northern boundary of Massachusetts and Nova Scotia ex-

tended to the River St. Lawrence. Their limits were therefore restricted by the proclamation of 1763, made after the treaty with France which ceded New France, or Canada, to Great Britain, and the Quebec act of 1774, which gave that province a strip of territory south of the St. Lawrence, extending to the highlands, or watershed, separating the streams flowing into the St. Lawrence from those flowing into the sea.

## THE WORDS BEFORE AND AFTER IDENTICAL.

In the treaty of 1783, therefore, the words used in describing the boundaries of the United States were exactly the words which described the boundaries of these provinces before the revolutionary war. The first difficulty arose over the identity of the St. Croix river. Another smaller river had come to be called the St. Croix, the present St. Croix river was called the Scoodic. The Americans claimed to the St. John river, the British to the Penobscot. To settle this difficulty, a commission was appointed consisting of Thomas Barclay, of Annapolis, representing the British government, and David Howell, of Rhode Island, representing the United States. These selected Egbert Benson, of New York, as umpire. Ward Chipman, Sr., was counsel for Great Britain, and James Sullivan for the United States. Investigation revealed that the St. Croix island, on which DeMonts spent the winter of 1604-5, was at the mouth of the then Scoodic river. The Scoodic, now the St. Croix, river was adopted. The American commissioners acted absolutely fairly and the award was unanimous. Ward Chipman was the most notable figure in the early life of New Brunswick, its ablest advocate and its strongest man. He made a special study of this boundary question, and he and his son, Ward Chipman, Jr., afterwards chief justice of New Brunswick, continued to act as counsel for the British side in further disputes. The St. Croix river was traced to its source, and a monument erected, which was ever afterwards recognized by all parties. Subsequent disputes were in respect of the line north of this monument.

## THE MAP USED AT PARIS IN 1783.

It is reasonably certain that the negotiators at Paris in 1783 used Mitchell's map of this section in their negotiations, and the only highlands shown on this map are those near the St. Lawrence river not far from the Little Metis river. Unquestionably, this was the place where the parties thought the original line was to run. It must be borne in mind that the boundary of New France was exactly the same between that province and Nova Scotia and that province and Massachusetts. If Nova Scotia ran to the highlands near the St. Lawrence, Massachusetts went there. If Nova Scotia's boundary was much farther south, then Massachusetts' would be correspondingly south, for precisely the same line—"the highlands separating the waters flowing into the St. Lawrence from those flowing into the sea"—the southern boundary of Quebec, applied both to Nova Scotia and Massachusetts alike.

## MUCH DIFFICULTY MIGHT HAVE BEEN AVOIDED.

No doubt existed at the early stages that in seeking the northwest angle of Nova Scotia it was necessary to cross the St. John river, and seek a point very much farther north. If this due north line had crossed the St. John river west of the Madawaska river, it is likely that much subsequent difficulty would have been avoided. It was never a question simply of a few miles more or less of land, but there was a most serious question involved in crossing the St. John river east of the Madawaska. The only means of communication between Canada and Nova Scotia at that time was up the St. John river to the Madawaska, thence by the Madawaska to the Temiscouata lake, thence by an easy road following an Indian trail to the St. Lawrence. It was by this route that parties went back and forth between the two provinces from Halifax to Quebec. It was down the Madawaska that settlers came that founded the Madawaska colony, of which Edmundston is now the center, and which was about the only settlement in the disputed territory. This Madawaska route was not only the shortest and most direct from Nova Scotia to Quebec, but it was the only possible route in winter when the navigation of the St. Lawrence was closed. It was the only route in winter from Quebec to England through British territory.

Mails were sometimes sent to England, by courtesy, through American ports, b[illegible] or misunderstanding might [illegible] any time, and as a military n[illegible] Madawaska route must be k[illegible] open at all hazards.

## A MAN OF FORESIGHT AND INTELLIGENT ZEAL.

The first man to realize the seriousness of this feature of the boundary was Sir Guy Carleton, at that time governor-general of Canada. The more this remarkable man is studied, the more one is impressed with his foresight and intelligent zeal. He saw the difficulty as early as 1785, and took steps to prevent this all-important route from falling into the control of the United States if it could be avoided. That the northwest angle of Nova Scotia would cross the St. John river was not then seriously disputed by any. Ward Chipman, the best informed man on the boundary and the persistent advocate of British claims, made this statement before the St. Croix commissioners in 1797:—"A line due north from the source of the western or main branch of the Scoodic or St. Croix will fully secure this effect (to keep sources of rivers in territory through which they empty) to the United States in every instance, and also to Great Britain in all instances except in that of the river St. John, where it becomes impossible, by reason that the source of this river is to the westward, not only of the western boundary line of Nova Scotia, but of the sources of the Penobscot and even of the [illegible]ebec, so that this north line must of necessity cross the river St. John."

## HIS OBJECT TO KEEP OPEN COMMUNICATION.

In 1787 Lord Dorchester wrote to his brother, Thomas Carleton, the governor of New Brunswick, requesting him to appoint a surveyor general to meet a similar officer in Quebec, to determine the boundary between the two provinces. His object was, as expressed in his letter, to keep open the communication. While the dispute with the United States as to the boundary was still outstanding, he made an appeal to his brother, the governor of New Brunswick, to settle the boundary between New Brunswick and Quebec in such a way as would be averse to the American claim that the boundaries of Maine went so far north. His foreseeing judgment recognized that the case against the United States could not be successfully resisted if New Brunswick persisted in claiming a northern boundary so near the St. Lawrence, because the northern boundary of New Brunswick and Massachusetts was the same. The New Brunswick government absolutely refused to yield a foot of their claim north at the very moment that they were using every effort to curtail the northern boundaries of Maine, which were identical with their own.

## UNITED STATES CLAIM TO ST. LAWRENCE HIGHLANDS.

When it became essential to contest the claim of Massachusetts to the boundaries which the terms of the treaty manifestly gave her in order to preserve the Madawaska route, every form of ingenuity was resorted to to escape the full claim to the highlands near the St. Lawrence. New Brunswick surveyors professed to discover a few hills forty miles north of the monument at the head of the St. Croix river, and these hills were seriously contended for by Mr. Ward Chipman as the highlands of the treaty, altho in no sense did they divide the waters flowing into the St. Lawrence from those flowing into the sea, and notwithstanding his previous statement that the line must inevitably cross the St. John river and run north of it. All sorts of surveys were made and various propositions were propounded, but the United States would accept none of them, and stoutly maintained its claim to the highlands near the St. Lawrence.

## SETTLEMENT FORMED ON DISPUTED TERRITORY.

In time the inevitable happened. Settlements were formed on or near the disputed territory, and these ultimately came in conflict in 1827 and war was threatened. To avert hostilities, a convention was agreed upon, submitting the points in dispute to the King of the Netherlands. After hearing all that could be said and submitted on both sides, he made an award, which gave to the United States nearly all they claimed, but fixed a compromise line which gave to New Brunswick and Quebec the Madawaska river and the St. John river down to where the line due north from the head of the St. Croix strikes

that river just below Grand Falls—much more indeed than the United States got under the arbitration treaty—yet this decision was accepted by Great Britain, New Brunswick and Canada because it gave them the coveted route of communication for which they had always contended, but the United States declined to accept this award, favorable as it was, giving them nearly all the territory they had contended for.

In 1839 this disputed territory led to further trouble. A collision occurred between rival lumbermen, and armed men were sent to the scene by the governor of Maine and governor of New Brunswick. Fortunately, by the influence of the Washington government, moderation prevented actual hostilities. Once more the matter was referred by mutual consent to a joint commission. Mr. Daniel Webster represented the United States, and Mr. Alexander Baring, Lord Ashburton, represented Great Britain.

## CANADIANS OVER-ESTIMATE THE ALLEGED LOSS.

It has been repeatedly asserted that Baring was a weak man and that Webster got the better of him. Mr. Baring, tho an able business man, and head of the great Baring House, was, perhaps, not an experienced negotiator. But Canadians preposterously over-estimate the importance of the matter in dispute and the alleged loss that accrued. The general impression is that the result of this convention was the projection of the state of Maine into Canadian territory, and that but for this treaty, a short line of railway from St. John to Montreal could have been built on Canadian soil. A careful examination into the matter will demonstrate that this is a cherished illusion. The disputed territory in the Aroostook valley amounted to twelve thousand square miles of land, and if every foot of it had been given to New Brunswick, the state of Maine would still have projected to almost as large extent as at present. The result of the convention was a compromise, by which the United States got seven thousand square miles and New Brunswick five thousand.

## THE DISPUTE CAME TO HEAD AFTER TREATY.

The dispute between Quebec and New Brunswick as to the boundaries between them, which had been active for years before the treaty, came to a head after the treaty. As it was impossible for the two provinces to reach an amicable adjustment it was taken up by the colonial office under Mr. Gladstone. Two commissioners, Major Robinson and Captain Henderson, were sent out to examine carefully into the boundaries between the two provinces, and these made their report, which, after some further adjudication was confirmed by the imperial parliament. The boundary fixed was a compromise. The commissioners had the assistance and advice of Hon. J. W. Johnstone, at that time attorney-general of Nova Scotia, and their report is an extremely able, logical and lucid statement, doubtless the work of that great Nova Scotian. One of the most remarkable features of this report is that the commisioners hold that New Brunswick is in the right in her claim for the St. Lawrence watershed as her northern boundary. If this be so, why was Maine not equally entitled? They also declare that New Brunswick has no claim to any territory west of the due north line and south of the highlands, and that Quebec has no claim to any territory south of the northern watershed. Consequently the territory west of the due north line does not belong to either. Then, pray, to whom did it belong, if not to Maine? But the commissioners declare that as by the treaty of 1842 this territory is British, they are called upon to divide it as fairly and conveniently as possible between the two provinces. This area amounts to something like 5,000 square miles, and it is apportioned to these two provinces to which neither have a just claim, and this is the way that Canada was sacrificed by the Ashburton treaty.

## MIGHT HAVE GOT ASSENT OF SENATE.

No convention giving Canada the whole of this area could have possibly obtained the assent of the United States senate. It was with difficulty that that body was induced to approve of the treaty actually made; if nothing had been conceded by Mr. Baring there would have been no convention. The difficulty would have grown acute and certainly ended in war. Was it worth while to go to war over seven thousand square miles of timber land? If New Brunswick had obtained every

acre she was seeking, so far as I can make out from a careful examination of the map, every foot of the present short line, from Montreal to St. John, would still have been laid on American soil, and many miles from any Canadian territory.

Much has been said in respect to the use of a map by Mr. Webster with a red line, said to have been marked by Benjamin Franklin, which supported the British contention. A thorough investigation into the matter disposes of any significance to be attached to this incident. Mr. Webster had a map, obtained from the archives at Paris, with a red line, indicating a boundary favorable to British claims, and he did make good use of it with the United States senate. But that this map was marked by Franklin there is not a particle of proof. Mr. Webster was secretary of state and naturally anxious that his arrangement of the matter should be ratified and a troublesome and dangerous matter of dispute be disposed of. His treaty encountered the almost invariable fate of all treaties made by the American executive, and signs were not wanting that this treaty would fail of ratification. Mr. Webster went before a committee of the senate to use his efforts to secure its assent, and one of the ingenious and effective means employed by him was the theatrical exhibition of this map, which so alarmed the senators that the treaty was promptly ratified.

## THE MAP SENT TO THE KING BY OSWALD.

But history has made a further discovery in respect of maps. At the very moment Ashburton was negotiating with Mr. Webster there was in His Majesty's archives in London a map sent to the King by Mr. Oswald, showing the boundary line agreed upon between Great Britain and the United States at Paris, and this map placed the line exactly as the United States claimed it. Whether this map was brought to the notice of Lord Ashburton, or whether he "concealed it" in his negotiations is not known, but scarcely anyone would believe he would be such a fool as to exhibit it, if he had it with him when negotiating, and I fail to see why Mr. Webster should be accused of moral delinquency for not exhibiting his Paris map to Ashburton, even if it had possessed any real validity.

## THE OREGON TREATY OF 1846.

At the conclusion of the war of 1812-15, between Great Britain and the United States, it became necessary to adjust matters between the two countries by a treaty, which was concluded in 1818.

It will scarcely be claimed that in this treaty Canadian interests were sacrificed. Under its provisions, the United States was compelled to renounce forever the right to take or cure fish, from any British water, except some parts of the coast around Newfoundland and Labrador. Another provision of this treaty was, the adjustment of the boundary between the United States and British America in the west, where settlement was already beginning. This was fixed at the forty-ninth parallel N. latitude to the summit of the Rocky Mountains. Beyond that, little was known. California was in possession of Mexico, Russia had some fur-trading stations on the islands south of Alaska, and the Hudson Bay company was pushing its trading posts to the shores of the Pacific. All north of California and south of Russian holdings was known as Oregon. The arrangement under the treaty of 1818 was that this region should be jointly occupied by the two countries for ten years. In 1827, this was renewed by convention indefinitely. In 1824 the United States made a treaty with Russia, acknowledging her rights on the coast, as far as 54 deg. 40 min. north latitude. In 1825, Great Britain, by treaty, similarly acknowledged Russian coast rights to 54 deg. 40 min. Therefore Oregon included the strip west of the Rocky Mountains between California and 54 deg. 40 min.

## A CHANGED ATTITUDE AFTER ELECTION.

The usual result of joint occupation ensued. The American fur traders, under Jacob Astor, were pushing their posts on the Pacific, as likewise the Hudson Bay company. Clarke and Lewis made their famous expedition in 180 , and the reports of this sent hordes of settlers from the western states across the Rockies. The occupation was then joint, and the authority equal; but men cannot obtain

grants of land under a joint authority. The question grew acute. The president, Mr. Tyler, was disposed to have the differences referred to arbitration; but this did not suit the political exigencies of the democratic party on the eve of a presidential campaign. They said, in effect: We are owners of North America, the whole belongs to us. There is nothing to settle. We will hold to 54 deg. 40 min. or fight. With this tocsin, they went to the country and won,—Mr. Polk, the democratic candidate being elected. But charged with the responsibility of office, he did not choose to fight Great Britain, and agreed to a reference to a joint commission. The administration in this case took unusual precautions to secure a ratification of their proposed action. All treaties and conventions by the constitution of the United States are subject to ratification by the senate. Treaties have failed to secure such ratification, chiefly on account of political considerations; but in this case, the wily secretary of state, Buchanan, secured the adoption in advance of a resolution in the senate, favoring a settlement on the lines he was proposing to follow.

## FOOLISH AND HOT-HEADED ON BOTH SIDES.

Foolish and hot-headed persons wanted the United States to insist upon the 54 deg 40 min. line, which would have taken nearly all the valuable part of British Columbia, including Vancouver Island. Equally foolish people, mostly those interested in the fur trade, wished the British government to insist upon the mouth of the Columbia river as a boundary. Either proposition was preposterous, and would never have been accepted by the other party. The commissioners did the only rational thing that could have been done—extended the boundary from the Rocky Mountains to the Pacific ocean, on the 49th parallel. Yet for generations we have heard that Canadian territorial rights were sacrificed by Great Britain, and even a professed judicial writer of history, of such respectability as Mr. Thomas Hodgins, K. C., in an article in the Canadian Encyclopedia, finds occasion to refer to this treaty in these terms:

"In 1846, during the honeymoon of the timid islanders and anti-colonial politicians, the diplomatic lever of the United States pried Great Britain and Canada out of several millions of acres in the Oregon territory, together with their British settlers and traders, and a sea-coast of about 6 degrees of latitude on the Pacific ocean with good harbor for naval stations." Such statements are a travesty upon history and a libel upon British policy. Vancouver Island extended south of the 49th parallel, but it was stipulated in the convention that the whole island should belong to Great Britain.

## THE TREATY OF WASHINGTON OF 1871.

For some years after the War of the Secession, a grave difficulty had arisen between the United States and Great Britain, in respect to the piratical cruisers, "Alabama," "Florida," and "Shanandoah," which were built in British ports for the Southern Confederacy. Strictly speaking, a breach of neutrality occurred—at all events, in respect of the "Alabama." The American ambassador brought to the attention of the British government the evidence of the vessel's character and her destination. The matter was submitted to the law adviser of the crown, who happened to be ill. This delayed his report to the point of culpability. An order was at length obtained to detain her. While it was on its way to Liverpool, the vessel escaped under pretense of a trial trip. She was not then, fitted for service or armed, and took her armament on board at the Azores, but the fact remained that there had been culpable delay, and a breach of the neutrality laws had been made. The "Alabama" had extensively preyed upon American commerce, and after the rebellion was repressed, demands were made upon the imperial government for compensation. If these had been reasonable, it is not unlikely the British government would have adjusted them, but the American claim grew to absurd proportion.

## TO MAKE ENGLAND RESPONSIBLE FOR COST.

It was sought to make Great Britain, in effect, responsible for the cost of the war. After much correspondence in 1869, a convention was agreed to, between Lord Clarendon, foreign secretary, and Mr. Reverdy Johnson, American minister at London, whereby all claims of the subjects and

citizens of the two countries arising out of the war, should be determined by independent arbitration. Before this could be ratified by the senate, Andrew Johnson had gone out of office and General Grant became president, with another cabinet. The republican senate was under the lead of Charles Sumner, chairman of the committee on foreign relations, and it suited the purpose of Mr. Sumner, that this fair arrangement should not be ratified, and it was accordingly rejected.

## THE CLAIMS PRESSED AFRESH.

After Mr. Fish became secretary of state, under Grant, the claims were pressed afresh, and, under the inspiration of Sumner, Motley, the American minister, revived a claim based on Great Britain's proclamation, of June 1861, recognizing the contestants as belligerants and proclaiming neutrality. Many unpleasant incidents occurred in connection with this protracted correspondence. A proposition was made, that all differences should be settled on the basis of handing over Canada to the United States. The "London Times" by implication, favored this. A sense of national obligation, however, prevented any serious consideration of this amiable proposition. Concurrently with these unpleasant negotiations, another occasion for friction had arisen. The reciprocity treaty with Canada had been terminated summarily by the United States in 1871. This necessitated the protection of Canadian fishing grounds, inviting occasional seizures of American fishing vessels. The Canadian people, also, were clamoring for renewed trade relations.

In time, both these questions and some others of less acute character were, by arrangement, referred to a joint high commission—composed of representatives appointed by both governments—Sir John Macdonald, being one of the British commissioners, chosen especially to represent Canadian interests. This treaty provided that any claim for losses on the part of American citizens from the "Alabama" depredations should be referred to a judicial tribunal to meet at Geneva. This was a happy disposition of these vexed claims, which had been a source of great trouble to the imperial government because they felt —that technically they had been in the wrong.

## WAITED A MEASURE OF RECIPROCITY.

The fishery question was disposed of, on the basis of giving American fishermen full rights in our waters, in return for free fish and oils in the American market, plus any monetary consideration which a tribunal therein created should award. Sir John Macdonald did not feel satisfied with this arrangement; he wanted a measure of reciprocity to satisfy the Canadian people—and this the American commissioners flatly refused to give. He hesitated about signing the treaty, and it was then pointed out to him by his associate commissioners, that his failure to sign the treaty might lead to the belief that it would not be ratified by the Canadian parliament, jeopardize its acceptance by the senate, and thus leave open the ugly and distressing question of the "Alabama" claims. Acting in an imperial spirit, he sacrificed his own convictions of Canada's interests, and signed the treaty. But can it be fairly said that Canada's interests were sacrificed? Sir John Macdonald was a politician —head of a government, dependent upon popular support for its existence. He naturally feared the political consequences of yielding the fishing rights on the terms of free fish and monetary compensation, but who will say, that looking at it broadly, Canada had no obligations to uphold imperial policy? Beside, as the event showed, he had the support of the Canadian people in the treaty. It was ratified by an immense majority in the house of commons. Nearly all the members from Nova Scotia, most interested in the fishery clauses, voted for the treaty. Mr. P. Power, representing one of the great fishing counties of the province, forsook his party to give it his approval. At an election, held soon after, Nova Scotia sent only one straight opponent of the govervent, and New Brunswick a great majority of supporters. For twenty years longer, Sir John stood in the limelight of public notice in Canada, and had many charges made against his character and policy—never did I hear the statement made that, among his faults, was to be placed the sacri-

fice of Canadian interests at Washington. He did what any honorable and patriotic Canadian would have done and to have jeopardized the settlement of grave oustanding difficulties between the two great nations, for the matter of a little more or little less reciprocity between the United States and Canada, would have been a policy, narrow, provincial, and unworthy of a statesman.

## OTHER MATTERS UNDER THIS TREATY.

Some other matters were disposed of by this treaty, which must be briefly noticed.

When defining the boundary between United States and Canada, on the Pacific, Vancouver Island had been given to Great Britain. There was an Island, San Juan, near it, the possession of which, under the terms of the treaty, was open to doubt. It depended upon which was the channel. The island was becoming inhabited, and its jurisdiction must be settled. It was decided to leave it to the arbitration of the Emperor of Germany. This certainly was fair. All the evidence was submitted to his consideration ,and he acted under the advice of his most eminent jurists. He gave the island to the United States. But where is the basis for any charge that anything was done by the British government, derogatory to Canadian rights? On the contrary, the full assistance of every department of the imperial government was placed absolutely at the disposal of the Canadian authorities, and no effort to present and enforce Canadian claims was spared.

## THE FISHERIES ARBITRATION OF 1877.

In 1877 the arbitration to determine the value of the rights given to Americans in our waters over the value of those which had been granted Canadians in America waters, met at Halifax. Canada's arbitrator was appointed entirely on the nomination of the Canadian government, Sir A. T. Galt. The umpire, M. Delfosse, was agreed to by the Canadian government. The Canadian government appointed all the counsel engaged in the case—indeed was given practical control of the proceedings, the imperial government being formally represented by F. C. Ford. The award was for $5,500,000, and no Canadian of intelligence will say that the sum was not sufficient and handsome. In this case, therefore, no ground is afforded for the charge that Canada's interests were sacrificed by imperial complacency.

## REGARDING THE TREATY OF 1888.

Another treaty with the United States was concluded in 1888 at Washington. Canada was represented by Sir Charles Tupper. He cordially concurred in the treaty, which was satisfactory to the Canadian people, as far as it went. It was rejected by the American senate. It was approved by the imperial government, and would undoubtedly have been ratified by the Dominion parliament, if it had been approved by the senate. A modus vivendi was arranged for conducting fishery affairs between the two countries for two years. The Dominion parliament placed in the hands of the governor-in-council the power of extending the operation of this modus vivendi from year to year. Voluntarily, this has been done ever since, and to-day, this same modus vivendi is in operation, by the free action of the Canadian government. No American fishermen are permitted to fish within the three mile limit, but they can, by paying a license fee, obtain bait and supplies in our ports, and while transhipment of cargoes in Canadian ports is purely optional on the part of the Canadian customs department, I am informed this privilege, when applied for is rarely denied.

Clearly Canada's interests were not sacrificed in the convention of 1888.

## THE BEHRING SEA ARBITRATION OF 1893.

It is not necessary to make more than a passing reference to this matter. The American government, which acquired Alaska from Russia in 1867, made extravagant claims as to their exclusive rights to use the waters of Behring Sea, which, if acknowledged, would have shut Canadian sealers out of all opportunity of participating in the catch. In August, 1886, the United States government seized Canadian vessels in Behring Sea, sixty miles from land. The imperial government took up the matter, at the instance of the Canadian government, and so

pressed the matter as to induce the United States to release the vessels, the officers and crews. but this was done, to use the langauge of Mr. Bayard, secretary of state, "without conclusion of any questions which may be found to be involved in these cases of seizure."

In 1889, five more British ships were seized and condemned. The imperial government again took up the matter, and Mr. Blaine, secretary of state. was driven to put forward a claim that Russia had exclusive jurisdiction within coastal waters, extending 100 miles from land, which, after the sale of Alaska, had become vested in the United States. This claim was distinctly repudiated by the imperial government, and the negotiation terminated. In 1891, to prevent an outbreak of hostilities, Great Britain arranged a modus vivendi with the United States, which Canada agreed to, but very reluctantly, and so persistently pressed her views, that a treaty of arbitration was entered into between Great Britain and the United States on April 18th, 1892.

## A COMPLETE VICTORY FOR CANADIAN CONTENTIONS .

Under the terms of this treaty, a tribunal was appointed to determine the matters at issue, to consist of two jurists to be appointed by the United States, two by Great Britain, and one each by France, Italy and Norway and Sweden. In selecting the British arbitrators, the Canadian government was given a free hand. Lord Hannan, an eminent English judge, and Sir John Thompson, were chosen. In all previous arbitrations, while Canada had been left free in the conduct of the case, an imperial representative had always been on the ground. In this case. the British government appointed C. H. Tupper as its official representative. He chose his own counsel, and the attorney and solicitor-general of England, accepted briefs with Canadian counsel. The result was a complete victory for Canadian contentions as to the unfounded character of American claims to exclusive jurisdiction, and the embodiment of a series of regulations of common value in preserving the seal for the joint benefit of United States and Canadian sealers.

No foundation can here be found for the charge or sacrificing Canadian interests,

## THE ALASKA BOUNDARY.

But we now come to the consideration of the last important arbitration and the one on which most of the claim of sacrifice has been based—the Alaska boundary. To properly place this matter in a just light, an exhaustive investigation of all the antecedent facts is necessary and this can only be pursued here to a very limited extent. The literature on the topic would make a respectable library and the inaccessible character of the region in question adds difficulty and mystery to the subject.

In the latter part of the 18th century, when there was scarcely an inhabitant on the Pacific Coast, except in California, the Russian traders were seeking to found a fur-enterprise on the Pacific Coast north of Latitude 55 —chiefly among the Islands which in honor of the Czar,, were named Alexander Archipelago. These efforts were not very successful, but they had the patronage and support of the Emperor, and in 1799, in their behalf he issued a Ukase. giving one Company, the United Trading Company, exclusive right to trade with the Indians and deal in furs. A port was erected on one of the Islands called then, New Archangel, (since called Sitka) and a Russian governor located there, with authority. But in the course of time, American vessels from the Pacific Coast began to visit these waters and to interfere with the trade. These traders conveyed their cargoes of furs to Canton and disposed of them at large profits. This conduct greatly impaired the value of the Russian Company's monopoly.

## MAKING USE OF TRADING VESSELS.

Presently the Russian company was compelled to make use of the American trading vessels to send their furs to China for sale; but in time the Governor found that the American traders were bringing liquor, firearms and ammunition and disposing of them to the Indians which constituted a menace to the peace and security of the Russian Colonies. The Russian government protested against this practice, to the U. S. Government, but no real satisfaction was obtained from this source. In 1811 the Russian Government. entered

into an agreement with J. J. Astor, the chief of the American traders, whereby he was to furnish the Russian Colony with supplies, at fixed prices, transmit the Co's. furs to China and dispose of them on commission and prevent smuggling and the sale of intoxicants and firearms.

But the war of 1812 broke out at that time between Great Britain and the United States, and prevented this agreement from being put into operation.

At last, in 1821, the Emperor Alexander issued a ukase, granting exclusive rights of commerce, whaling fishing and fur-trading to Russian subjects and forbidding all foreign vessels from approaching with 100 Italian miles of any land under Russian jurisdiction.

This proposition was in violation of recognized international marine law, and was at once resisted by the United States and Great Britain, whose Hudson Bay fur-traders had extended their operations to the Pacific ocean. When the attention of the Russian foreign office was directed to the invalidity of the ukase, an intimation was given to both these countries that the prohibition of 100 miles would not be insisted upon. but the emperor did not wish the matter specially and officially dealt with, but it was ultimately agreed that a treaty should be made between Russia, on the one side, and Great Britain and the United States on the other, which would settle all matters in difference and include provisions which would amount to an abandoning of the prohibition of access by ships of commerce to the waters of the Behring Sea.

## PREFERRING CLAIMS TO NEW TERRITORIAL RIGHTS.

But as the negotiations progressed, it was found that the United States was preferring claims to territorial rights along the coast up to 61st parallel, north latitude, which Great Britain did not recognize, nor Russia either. So the British ambassador, Sir Charles Bagot, withdrew from joint negotiations, and the Americans concluded a treaty with Russia in 1824, by which they secured the rights of navigation involved; the right to trade in Russian ports for ten years, and they abandoned all territorial rights on the coast north of 54° 40' n. latitude. This treaty does not concern the matter now under consideration.

The next year, however, a treaty was concluded between Great Britain and Russia, in which the same maritime rights were secured, and the right of trading in Russian ports on the Pacific Coast for ten years. But another and very grave question arose between these two countries. The United States had no territorial possessions on the coast, north of the Columbia river, latitude 46 degrees or 47 degrees. Whereas, the Hudson Bay company, under the British flag and jurisdiction were extending their posts to the coast as far north as the Mackenzie river. The Russian traders were carrying on their business on the islands forming the Alexander archipelago, and their trading towns, of which New Archangel was chief, were all on the islands. They were not really desirous of establishing posts on the mainland, but what concerned them most of all. was, that between 54 degrees 40' and Alaska, proper, no Hudson Bay Trading posts should be formed upon the coast adjoining these islands, and they therefore insisted that the treaty should give them a lisiere—strip of land—along the coast, in order that they might be safe from competing British trading posts opposite their island posts.

## CONCEIVED IT A GREAT MENACE.

The monopoly of the Russian Fur company was of value, only so long as there were no trading establishments located on the bordering coast, over which their exclusive rights extended. The company would have been glad to escape the annoyance of the coasting traders by water. but this could not be avoided. What they conceived as a greater menace was a single trading post on the shore. The British negotiator in his reply to this demand of a lisiere, mentioned as an objection that "it deprived his Britannic majesty of sovereignty over all the inlets and small bays lying between latitude 56 degrees and 54 degrees '0'. " This should be carefully noted as bearing on the subsequent contention of Canada in respect of the Lynn canal. Sir Charles Bagot then intimated that Great Britain would accept a line on the north of Prince of Wales island, and "thence extending on the main-

land to a point ten marine leagues from the coast, the line would run from this point toward the north and north-west parallel to the sinuosities of the coast, and always at the distance of ten marine leagues from the shore, as far as the 140 degrees of longitude, thence to the Polar Sea."

## THE LINE THAT WAS ULTIMATELY AGREED UPON.

Except that the south line was ultimately placed at the south of Prince of Wales island, latitude 54 degrees, 40', this is the line that was ultimately agreed upon:

Article 3 of the treaty is as follows:

(3.) The line of demarcation between the possessions of the high contracting parties, upon the coast of the continent, and the islands of America to the northwest, shall be drawn in the following manner:—

"Commencing from the southernmost point of the island called Prince of Wales island, which point lies in the parallel of 54.40 n. latitude and between 131 and 133 degrees of west longitude (meredian of Greenwich) the said line shall ascend to the north along the channel, called the Portland Channel as far as the point of the continent where it strikes the 56th degree of n. latitude, from this last mentioned point, the line of demarcation shall follow the summit of the mountains situated parallel to the coast, as far as the point of intersection of the 141st degree of west longitude (of the same meredian) and finally, from the said point of intersection the said meredian line of the 141st degree in its prolongation as far as the Frozen Ocean, shall form the limit between Russian and British possessions on the continent of America to the north west.

## THE LINE OF DEMARCATION.

(4) With reference to the line of demarcation laid down in the preceding article, it is understood:—

First.—That the island called Prince of Wales island shall belong wholly to Russia.

Second.—That whenever the summit of the mountains which extend in a direction parallel to the coast, from the 56th degree of north latitude to the point of intersection of the 141st degree of west longitude shall prove to be at the distance of more than ten marine leagues from the ocean, the limit between the British possessions and the line of coast, which shall belong to Russia, as above mentioned, shall be formed by a line parallel to the windings of the coast, and which shall never exceed the distance of ten marine leagues therefrom.

(5.) It is moreover agreed that no establishment shall be formed by either of the two parties within the limits assigned by the two preceding articles to the possessions of the other; consequently, British subjects shall not form any establishment, either upon the coast or upon the border of the continent, comprised within the limit of the Russian possessions as designated in the two preceding articles, and in like manner no establishment shall be formed by Russian subjects beyond the said limits.

This is the treaty whose interpretation was the subject-matter of the Alaska Boundary award.

## THE PURCHASE OF ALASKA FROM RUSSIA.

In 1867 the United States purchased Alaska from Russia for $7,000,000, and acquired whatever territorial rights in North West America Russia possessed and became the inheritors of the rights acquired under this treaty.

For nearly fifty years no question arose under this treaty. The maps that were published afterwards in Russia, in the United States, in Great Britain and in British North America, represented the strip of land ceded to Russia under the treaty of 1825 substantially as they now are, as a result of the arbitration. As the country was wild and uninhabited, no person had any concern in the matter. It was rarely visited.

The strip of land was simply a sea of mountains, wild and desolate, except where penetrated in two or three places by rivers which emptied into the Pacific.

## AFTER BRITISH COLUMBIA BECAME CANADIAN.

The first time any question of boundary was raised, so far as can be ascertained, was after British Columbia had been admitted to the Dominion, and it occurred to the federal government that it would be advisable to

have the boundary between the province and Alaska, including the islands and strip of land, defined; and application was made to the British minister at Washington to approach the United States government with a view of having a joint commission appointed by the two countries for the purpose of defining the boundary. The United States authorities consulted with those persons employed in their service in this region, most fitted to advise in the matter, and these experts said that it would require an expenditure of $1,500,000, and at least nine years time, to accomplish such a purpose, owing to the character of the country—barren, inhospitable mountains. Congress was not disposed to make such a large appropriation for a purpose which then seemed of small importance, and the matter remained undisposed of. The suggestion was made by the American experts that a survey of the rivers piercing the mountains—the Stikine, the Taku, and the Chilcat, emptying into the Lynn canal, would suffice for all practical purposes, as the line between these defined parts could be easily recognized by imaginary projections from the known points. Ever. this proposition did not appeal to Congress, and nothing was done until 1876, when a very delicate question arose.

## PEOPLE DRAWN BY FINDS OF GOLD.

Gold had been discovered in the Cassiar district in British Columbia, not very far from the Stikine river, and people had flocked there by the usual lure of gold discoveries. A man named Peter Martin had committed some crime and the British Columbia court at Cassiar had tried him, found him guilty, and sentenced him to a term of imprisonment. But there was no suitable jail in the Cassiar district, and it had accordingly been arranged that he should be taken to Victoria and imprisoned there. But there was no practicable means of conveying him to Victoria, except via the Stikine river, which ran through a strip of land belonging to the United States. Now the treaty had secured to Great Britain the right of navigating this and the other rivers for the purpose of commerce. The supplies to the Cassiar mines went by this river, the judge went that way to hold his court, and the only way to get this man to Victoria was to send him down the river, and ship him from Wrangel to Victoria. He was accordingly sent in charge of a constable and several persons were in the boat. On the way down the river the constable landed to make a fire and cook provisions. After the meal, Martin, who was in chains managed to get hold of a gun, assaulted the constable and made a dash for liberty. He was, however, overpowered and taken on to Victoria, where he was tried for his assault upon a police officer. He was not defended, but the question as to whether the assault was made on American or British soil was considered, and the judge charged the jury that there was no evidence which securely fixed the jurisdiction, he therefore told them that they were at liberty to find him guilty if they were satisfied he had committed the offense. He was convicted and sentenced to one year and nine months' imprisonment.

## THE COURT HAD NO JURISDICTION.

Meanwhile, the matter had been brought to the notice of the United States government and the secretary of state wrote to the British minister, claiming that Martin had been convicted in a British court of an offence committed on United States soil, and therefore the court had no jurisdiction. It also claimed that while the subjects of Great Britain had the right of navigating the Stikine river, they had no power to convey a prisoner by this river through American territory, and the moment he touched their land he became free, subject to extradition. The matter was referred to the Canadian government, and Mr. Edward Blake, the minister of justice, made an elaborate report upon it. He was not disposed to admit that the crime was committed on American soil, but he properly held that the burden of proving jurisdiction was upon the crown, and it had not been clearly established that the crime was committed on British soil, therefore Martin could not be held. A survey made at this time, at the instance of the Dominion government by Mr. Joseph Hunter, of the Stikine river, revealed the fact that the boundary, as he conceived it, under the treaty, was east of the spot where the crime was

committed. In the end the Canadian government ordered Martin's release, but in order not to commit themselves on the matter of the boundary, they did this on the ground that a prisoner could not be conveyed in custody through the territory of another country—which was a breach of territorial rights.

## THE DISCOVERY OF GOLD IN YUKON.

What brought the matter to an issue, was the discovery of gold in the Yukon, and the rush of multitudes there in 1896 and the following years. The natural means of access was through the White Pass of the Rockies, some distance above the head of Lynn canal., On this canal, near its head, the U. S. government had established towns and customs house at Dyea, and Skagway, and all persons and all goods going into the Yukon, had to report at the customs house at Skagway. Canada felt the need of a port on the Lynn canal, and then arose the agitation for a settlement of the boundary question, in such a way if possible, as to get a port in some of these navigable inlets. Consequently, in the joint high commission which had been arranged between Canada and the United States to discuss and settle if possible, all questions then outstanding, the boundary was made one of the subjects of prime importance.

## CONFRONTED BY USAGES OF GENERATIONS.

The task before the Canadians was a very difficult one. They were confronted by the usages of generations —by a uniform series of maps recognized by all the countries concerned, As late as 1884, an official map of British Columbia, had been prepared under the direction of the provincial government, and this gave the boundaries between that province and the United States, almost precisely in accordance with the line ultimately established. The treaty said, "commencing from the southernmost point of the island called Prince of Wales, the line shall ascend north, along the channel called the Portland channel, till it strikes the 56th degree of latitude." It seemed enormously difficult to get the line defined to suit, by using that channel, so the Canadians prepared a map showing the line running up the Clarence strait. It was conceded on all sides that the negotiators of the treaty of 1825, had before them the maps and narrative of Vancouver, the only person who had made a careful survey of this region, and his maps contained the names of all the islands and inlets in that vicinity. Portland channel is plainly marked in his maps and his narrative makes clear what he meant by it. The Americans, of course, declined to recognize a line entirely different from that clearly defined by the treaty, and ultimately it was found impossible to reach any agreement on the subject, by the joint commissioners.

## NOT OPEN TO DISCUSSION THE AMERICANS FELT.

The American negotiators felt that the line was clear, and not open to either discussion or arbitration. Most great nations refuse to arbitrate respecting territory, the right to which, is reasonably clear, and it was with considerable difficulty, that by persistent pressure the Canadian government, acting through the imperial foreign office, at last obtained a treaty with the United States, agreeing to refer the matter of the boundary to a tribunal consisting of "six impartial jurists of repute, who shall consider judicially, the question submitted to them, each of whom shall first subscribe an oath that he will impartially consider the arguments and evidence presented to the tribunal and will decide thereupon according to his true judgment."

This treaty was ratified by his majesty and also the U.S. Senate. Then came the appointment of the jurists. The president appointed Mr. Elihu Root, secretary of war, and Senators Lodge and Turner. In the strict sense of the word these men could hardly be called impartial jurists. They were all eminent lawyers, and quite fitted, by training and character, to fill any judicial office in the United States. But they were not then judges, and they were all actively engaged in political life. They were not the men whom the president, if he had been free, would probably have chosen; but it is an open secret that he was not free. The senate was not very favorable to submitting a ques-

tion which they thought was not open to doubt to arbitration, but they agreed to confirm the treaty on being assured that the president would appoint men acceptable to them, and it was only upon this assurance that the treaty was ratified.

## BRITAIN IS NO WAY DISREGARDED OUR INTERESTS.

Of course the Canadian government protested, and I am going to deal fully with this protest, for the purpose of demonstrating in the clearest manner that in this matter the imperial government in no way disregarded Canadian interests, but on the other hand, put the determination of the whole course to be pursued, in the hands of the Canadian government. When Lord Minto, on behalf of the Canadian government cabled their protest to the colonial secretary, that gentleman sent immediately the following answer:—

London February 27th, 1903.

With reference to your telegram dated the 19th and 21st of February, the selection of American members of tribunal has been the source of as much surprise to his majesty's government as to your ministers. Situation is full of difficulty, and his majesty's government earnestly desire to have concurrence of your ministers in dealing with it.

It seems certain to his majesty's government that it would be useless to press the U. S. government to withdraw names put forward, and arguments relative to the fitness of the three American representatives, howcal results.

His majesty's government have, therefore, to choose between breaking ever convincing, can have no practioff negotiations altogether or accepting American nominations, and appointing as their colleagues representatives who will meet the altered circumstances of the case. They would regard the first alternative as a grave misfortune to the interests of Canada, and would prefer that the inquiry should proceed, in confident hope that Canadian or British interests would not be prejudiced thereby, as, even in the event of failure, much important information upon controverted points would be collected, and placed before the public, and reasonable settlement at some future time thereby facilitated.

His majesty's government earnestly hope that these considerations may be carefully weighed by your ministers, and that they will favor his majesty's government, if they agree with the opinion stated above, with an expression of their views as to the most advantageous composition of the British side of the tribunal. ONSLOW.

## THE REPLY SENT BY LORD MINTO.

Lord Minto, on behalf of his ministers on March 6th, replied in the following terms:—

Ottawa, March 6th, 1903.

"My ministers have observed from the public press, and have also been officially informed that while the matter is still under consideration, the treaty has been confirmed by his majesty's government, and an exchange of ratifications has already taken place at Washington. It is presumed that this fact precludes further discussion, and my ministers will, therefore, proceed to do whatever is necessary on their part to make good the engagements of his majesty's government, but they must reserve the right to submit to the Canadian parliament the whole correspondence, or such statement of the case as will fully explain the whole matter, and especially the manner in which the assent of Canada was obtained.

"My ministers do not agree with the suggestion that the altered circumstances justify a departure on the British side from the disposition previously manifested respecting the composition of the tribunal. If members of the tribunal are to be appointed by his majesty's government, my ministers are of the opinion that only judges of the higher courts, who in the best sense of the words would be impartial jurists of repute, should be chosen."

From this it will be observed that the imperial government offered even to break off negotiations, if Canada insisted upon it, which would have been a grave and unjustifiable step, as they also gave the Canadian government the right to appoint as their representatives on the commission, men who will meet the altered circumstances of the case, in other

words, if the Americans appointed three interested men as their jurists, the Canadians should appoint three jurists of the same type on their side. Surely, here was no indication of a disposition to sacrifice Canada in any way. The Canadian government, to their credit be it said, declined this alternative, but when the appointments came to be made two of their appointees were, in some respects, of a type corresponding to the American appointees. The original arbitrators named by Canada, were the Lord Chief Justice, Lord Alverstone, Judge Armour, of the supreme court of Canada, and Sir Louis Jette, lieutenant-governor of Quebec. Judge Armour having died before the commission assembled, his place was taken by Mr. A. B. Aylesworth, an eminent Canadian barrister. All the arbitrators were required to take an oath to determine the matter impartially according to the evidence, which was as binding upon them, as the oath taken by a judge of the higher court.

## AN EXAMINATION IN DETAIL.

Examine the status of these arbitrators a little in detail. Mr. Aylesworth was an eminent and high-minded Canadian barrister—not more so than Mr. Root. Mr. Root was in public life and had political ambitions, so, indeed, had Mr. Aylesworth. He was not then in parliament, but was an active supporter of the government, his name had been mentioned as a possible minister, and very soon after the award, he was actually sworn in a minister in Sir Wilfrid's government. Sir Louis Jette was a high-minded gentleman, who had been on the bench, but was now lieutenant governor. He was a staunch friend of Sir Wilfrid Laurier a sturdy Canadian, and naturally inclined to uphold Canadian rights, as fully as was Mr. Root or either of his colleagues, who were all men of high repute and unblemished character. The only member of the commission, therefore, who was actually under judicial responsibility, was Lord Alverstone, and the only one who could fulfil the literal conditions of the treaty—an impartial jurist of repute. He had no political interests to serve; as an Englishman, his sympathies would naturally be with a great British commonwealth, but occupying the great position of lord chief justice, he could be relied upon to be influenced by nothing except the essential rights of the case. To all intents, it seems to me the case might have been left to his single arbitration, as in the end it proved to be.

## THE ARBITRATORS MEET IN LONDON.

The arbitrators met in London in the summer of 1903. Great Britain was represented again by a Canadian, Mr. Clifford Sifton. Eminent counsel were engaged — English and Canadian. Elaborate cases and arguments, accompanied by a multitude of maps and charts, were presented on both sides. This body of literature would make a fair library. Nothing was omitted which could throw the faintest light on the subject. There were seven questions submitted for the determination of the tribunal, and it is most convenient to deal with these in detail.

(1) What is intended as the point of commencement of the line? The answer to this was unanimous—Cape Muzon.

(2) What channel is the Portland channel?

The point of issue here was, which of the two channels called on the maps Portland channel, should be followed? The largest of the two inlets was the southern one, which, if fixed, would have left the two large islands of Pearse and Wales in U. S. territory. But all the commissioners agreed—the three Americans concurring in this, tho the U. S. counsel had strenuously resisted it—that, according to Vancouver's chart and narrative, it was the narrower inlet to the north, called in recent American maps, Pearse's Inlet, which Vancouver had called in honor of the Duke of Portland, and the larger channel had been named by him Observatory Inlet. This decision was favorable to Canada's contention, and the action of the American commissioners and their reasons for it were eminently judicial in spirit. Unfortunately, a difference occurred as to the outlet of the Portland channel. By a straight line this canal runs to the ocean north of two small islands named Sitklan and Kannaghunut, but the channel north of these islands is narrow, and in places shallow and incapable of navigation by large craft, whereas between Wales and Sitklan

islands there is a broad and deep channel, which forms the natural outlet of the canal. The Americans decided that the outlet should be the broad and navigable one called Tongas Straits, between Wales and Sitkian islands. Sir Louis Jette and Mr. Aylesworth decided it should be the narrow strait north of Sitkian and Kannaghunut islands. Lord Alverstone, in a carefully reasoned judgment, weighing with absolute fairness the pros and cons, decided that the Tongas Strait, between Wales and Sitkian islands, was the route taken by Vancouver, and was the most natural outlet of Portland channel.

## THE POINT ROUND WHICH CONTROVERSY RAGES.

It was upon this point that most of the subsequent controversy has taken place. Sir Louis Jette and Mr. Aylesworth dwell upon the fact that at the session of the arbitrators at which the question of whether the north or south inlet was Portland channel was under consideration, the decision was, that the north inlet was the true Portland channel, and that this involved taking the straight and narrow line to the coast. The decision was in favor of the north inlet, but this did not necessarily involve that its outlet should be the narrow and non-navigable line, when near its southwestern extremity there was a broad and deep channel, which Vancouver himself had chosen on his voyage down the channel as his means of reaching the sea. The most casual glance at the map will indicate to anyone whose mind is not blinded by prejudice that this Tongas Strait of 1825, Russia was to have to 54 degrees is the natural outlet. It corresponds also with the object of the convention 40 minutes. The line from Cape Muzon at 54 degrees 40 minutes strikes the Coast islands at Tongas Strait at just about 54 degrees 40 minutes, whereas if it entered at the narrow strait north of Kannaghunut island, it would be above 55 N. latitude.

## THINKS ALVERSTONE'S DECISION REASONABLE.

Lord Alverstone may have been wrong—all human beings are fallible. Giving the matter my best consideration, I think his decision was reasonable and fair. But who will say that it was not honestly and impartially given according to his best knowledge and ability? What motive could he have had in deciding adversely to Canada in a matter purely judicial? Some persons have been absurd enough to charge that this was done at the instance of the imperial government, who were interested in getting the matter disposed of. No rational man who stops to reflect can ever give such a proposition a moment's thought. No cabinet minister in the imperial government would ever think of venturing to approach a British judge and seek to influence his decision. Even in Canada, where some think our ideals are not as high as those in England, no cabinet minister would approach a Canadian judge and propose that he should violate his judicial oath for political or national reasons, and if it were attempted, it would be instantly and properly resented. Lord Alverstone stands on the highest plane among British jurists. As Sir Richard Webster, he was twice attorney-general of England—one of the most eminent men at the bar, in his time, and when he was elevated to one of the greatest judicial posts in the nation or the world, what being could imagine him prostituting a spotless name and reputation by entering into a low intrigue with politicians to color his judgment according to political needs? These unjustifiable insinuations which were scattered broadcast over Canada for years, by persons who had probably never spent two hours in careful study of the points at issue, were an unmerited aspersion on British honor, and were and are as baseless and unfounded as the fables of Aesop or the fantastic imaginings of the Baron Munchausen.

## ARE THE BARREN ISLANDS A SOURCE OF DANGER?

One other absurdity in this connection must be noted. It has been persistently alleged that possession of these two barren islands of a few acres is a danger to us, as they can be made a base for military and naval operations by the United States. If they were handed over to Canada tomorrow, the United States, within five miles of these islands, could erect all the military posts and naval stations she required on her own adjoining territory. This is another instance of the folly which is born of zeal without intelligence and reflection. The posses-

sion of the islands or want of them is of such infinitesimal importance to Canada that discussion of them is fruitless. Under the award, Canada did add to her territory two large islands which had long been claimed by the United States, and for this let us be duly thankful, but it is at the same time idle to regard this acquisition as of any great value or importance to Canada.

## CANADA'S OBJECT TO OBTAIN A PORT.

The disposal of the rest of the line does not require lengthy consideration. It was ultimately established on practically the lines that had been adopted in all the maps which had been made and used by Russia, the United States, Great Britain, Canada and British Columbia from the date of the treaty of 1825, until the discovery of gold on the Yukon, when Canada prepared a map for use in negotiating with the Americans at the meeting of the joint high commissioners in 1897. That map made the line beginning on the coast at 54 degrees 40 minutes to run up the Clarence Strait; but as the language of the treaty so expressly stated the Portland channel, this was abandoned in presenting their case to the tribunal in 1903, and the southern line ran up the Portland channel until it met the 56th parallel. The object of Canada was to obtain a port, and the line urged by Canada consequently ran along the coast in such a way as to cross the Lynn canal before its head waters were reached. If this had been adopted, the two American towns or posts of Dyea and Skagway would have been in Canadian territory, and the Stars and Stripes would have been pulled down, and the Union Jack put up. This would have been a very pleasant and desirable event for Canada; but it could scarcely have been done consistently with the plainly declared objects of the negotiators of the treaty of 1825. The Russian negotiators made a very explicit declaration of their reasons for insisting upon a strip of land on the coast of the mainland. It was that the Hudson Bay company, or any other fur trading company should not be able to interfere with their posts on the islands of Alexander Archipelago, by an adjoining port on the coast. Reverting again to the reports of the negotiations, let us note the words of the Russian plenipotentiaries, Count Nesselrode and M. de Poletica. Sir Charles Bagot, the British plenipotentiary, had, in reply to the demand for this lisiere, or strip of land on the mainland, made the following representations: "A line of demarcation drawn from the southern extremity of Prince of Wales Island to the mouth of Portland channel, thence up the middle of the channel until it touches the mainland, thence to the mountains bordering the coast and thence along the mountains as far as 139 longitude would deprive his Britannic Majesty of sovereignty over all the inlets and small bays lying between latitude 56 and 54.40 whereof several (as there is every reason to believe) communicate directly with the establishments of the Hudson Bay company and are consequently of essential importance to its commerce.

## THE REPLY OF THE RUSSIANS.

To this the Russian plenipotentiaries replied that those proposals had been examined by the emperor, who had charged them to repeat to the British plenipotentiaries "That the possession of Prince of Wales Island, without a slice of territory upon the coast situated in front of that island could be of no utility to Russia. That any establishment formed upon said island, or upon the surrounding islands would find itself, as it were, flanked by the English establishments on the mainland and completely at the mercy of these latter." This was the basis of negotiations insisted upon by Russia to the end. Sir Charles Bagot broke off negotiations for a time, but his place was taken later by Sir Stratford Canning, who, under instructions, consented to this lisiere, or strip, on the terms demanded by Russia. It is perfectly clear that if the Hudson Bay company could have created a port under this treaty, on the Lynn canal, that everything which the Russian government had insisted upon avoiding would have been done, and, therefore, in making maps of the strip of land as it ran north to Mount St. Elias, it was drawn as the treaty requires, parallel to the sinuosities of the coast, and curved about the head of Ly[illegible] as in respect to all the other[illegible] ties of the coast.

## CANADA'S FIGHT WAS A GOOD ONE.

Canada made a good fight for a line that would suit her interests and give her a port on Lynn canal. In brief, her point was that the boundary fixed by the treaty was "a line of demarcation following the crest of the mountains situated parallel to the coast," subject to the condition that if such a line should anywhere exceed the distance of ten marine leagues from the ocean, then the boundary between the British and Russian territory should be formed by a line parallel to the sinuosities and distant therefrom not more than ten marine leagues." This method of fixing the boundaries was derived from Vancouver's maps and charts; these are preserved and he has traced upon them a regular line of mountains situate near the coast. This, as a matter of fact, was purely imaginary. As he sailed near the coast, the shore presented the appearance of a continuous mountain range; but in the efforts of both governments to obtain a range of sufficient regularity to constitute a natural boundary within ten leagues of the coast, the chief thing discovered by explorers was that no such regular range exists. Most of those who have endeavored to survey this wild and in places almost inaccessible region, report that there is a sea of mountains along the coast with no range of regular form which could be adopted.

## A RANGE NEAR THE COAST.

Dr. George M. Dawson, the Canadian explorer, intimates that something like a range could be obtained near the coast, the summit of which would be from five to seven or eight miles from the shore. It was the Canadian contention before the tribunal that a range of mountains near the coast could be obtained, and that as the treaty only mentioned ten leagues as the maximum distance from the shore, where a regular mountain range could not be obtained, the line ought to be fixed near the shore, according to the general contour of the mountains near the coast. Conceding the fact that a regular range near this exists, which was stoutly denied upon accumulated authority by the United States consul, and granted the tribunal had fixed the line accordingly, this would have been of little if any advantage to Canada. It was not a mile or two more or less of worthless mountain territory they were seeking.—it was a port on the Lynn or Taku inlets that was sought. It was not a question of the width of the lisiere, or strip, but the direction it ran. If it wound around the inlets so as to make it impossible to have a seaport on them it did not matter whether it was ten marine leagues or five marine leagues.

## PARALLEL TO THE SINUOSITIES OF COAST.

The American arbitrators, of course, decided that the line ran parallel to the sinuosities of the coast, and therefore around the heads of the inlets. The Canadian arbitrators decided that Taku inlet and Lynn canal were not coast or ocean, and the line, therefore, in following the nearest range, crossed these inlets. The determination, therefore, was with Lord Alverstone. If he had concurred in the conclusions of the Canadians, there would have been no result; but in a carefully reasoned judgment, in which all material points are weighed with exact impartiality, he decided "that the treaty called for a line parallel with the sinuosities of the coast, and that there should remain with Russia a continuous fringe or strip of coast on the mainland, not exceeding ten marine miles in width, separating the British possessions from the bays, ports, inlets, havens and waters of the ocean."

## IS HE AMENABLE TO ATTACK AND ASPERSIONS?

After giving the fullest investigation of the whole question this is exactly the conclusion I have reached, and this is the judgment I would have been compelled to give under oath. But all mortals are fallible, Lord Alverstone may have been wrong, and my impressions may be erroneous. But is he amenable to attack and to be exposed to all sorts of imputations upon his integrity and honor because he reached this conclusion? Read all the facts—all the arguments presented, and then read his calm judicial reasoning, and no reasonable man will say his judgment is not worthy a high-minded British judge. He gave his decision and his reasons for it. These reasons may not be infallible, but they are clearly judicial and supported by an array of facts which

make it impossible to say that the conclusion was not impartial and honestly made. There exists no basis for any imputations whatever upon the fairness and honor of the lord chief justice, and history will so declare.

## HOW WAS IMPERIAL GOVERNMENT RESPONSIBLE?

But assuming, for a moment, that Lord Alverstone forgot his oath, and ignored his judicial obligations, pray how was the imperial government responsible for this? They appointed him with the assent of Canada. They had offered to allow Canada to appoint three men who would meet the three United States jurists on even ground. Canada had declined this and agreed to Lord Alverstone. If he decided against them, even wrongly, upon what ground can it be alleged that Canada was sacrificed by British complacency? The tribunal that decided the question was a tribunal that Canada accepted without protest, so far as he. appointees were concerned; the suggestion that members of the imperial government "approached" the lord chief justice and "induced" him [illegible] ide against Canada is too mon[illegible] for consideration.

## [illegible]ITING FOR CANADA FR[illegible]M BEGINNING TO END.

Th British attorney-general was fighting for Canada from the beginning to the end of the contest, and after the decision was given his eminent services were fittingly acknowledged publicly and formally by Hon. Mr. Sifton, the British-Canadian representative. Once again it must be distinctly stated that the British judges do not permit cabinet ministers to attempt to influence them in their judicial decisions, and it does not seem to be going very far to say that imperial ministers are not in the habit of attempting to plot with judges to get decisions to suit their political interests. The whole suggestion is too absurd for serious consideration and is referred to because there has been in this country an unending chorus from press and people in Canada on this question, which could have no meaning at all unless it was based on a dishonorable intrigue between an imperial minister and a British judge. If the Imperial government were really so pusillanimous as to be seeking a means of sacrificing the interests of their greatest dependency to curry favor with their most powerful rival, would Lord Onslow have written to Lord Minto, suggesting to the Canadian government the "appointing as their colleagues representatives who will meet the altered circumstances of the case?"

## NOT ONE INCIDENT PROVING SACRIFICE.

The only addition observation I make is, that there is not one incident in connection with this Alaska boundary award from beginning to end that justifies any charge that Great Britain sacrificed Canadian interests. The whole weight and influence of her diplomacy was freely used to secure Canadian ends. The full conduct and control of the matter was unreservedly placed in Canadian hands, and if the results were unsatisfactory no blame can be attached to any department in the imperial cabinet. I think it was decided rightly. I am satisfied that Canada went into the contest with the weaker case, but if I am wrong upon this point, still responsibility for failure in no sense rests with the imperial government.

## A CANADIAN RATHER THAN IMPERIALIST.

Few will charge me with being an imperialist. I am a Canadian, and love my country, am proud of its present development and look forward with high hopes of its future greatness. Canada is large and rich enough to claim a right to a voice in all matters concerning her relations to the rest of the world. As long as we are a part of the empire, all treaties with foreign countries must be negotiated and concluded in the name of the sovereign. While this is technically true, as a matter of fact, since confederation, Great Britain has taken no step in any matter relating to our interests, without giving Canada a commanding voice in its determination.

## NOTHING AT ALL IN THE CHARGE.

She gave Canada a powerful representation in the treaty of Washington, she gave her authority to George Brown to negotiate in the name of the sovereign a reciprocity treaty in 1874, to Sir Charles Tup-

per to make a trade treaty with France in 1893, and recently to Messrs. Fielding and Brodeur to make another with the same country. These gentlemen were handicapped by no official meddling. They had the use of the King's name and their own sweet will. The Behring Sea matter was settled by Canadians to suit themselves; the Washington treaty of 1888 was negotiated with Sir Charles Tupper representing Canada, and in the joint high commission of 1897-98 to adjust matters between the United States and Canada, Sir Wilfrid Laurier, Sir Richard Cartwright, Sir Louis Davies and John Charlton represented Canada, and Lord Herschell was the only Englishman on it and he was there by Canadian request. Where, pray, is there an instance which justifies even a suspicion that Great Britain since confederation has in the smallest degree sacrificed Canadian interests by design or by imbecile complacency? Yet this is the reiterated charge.

## END PLEADING THE BABY ACT.

As Canada grows and becomes more important, she will exercise a larger influence and assume a fuller responsibility in the disposal of matters touching her interests in foreign countries. The time may come when she will assume full responsibility. But while we should be always ready to uphold our rights firmly and tenaciously it is not manly, when we lose, to seek to shift the responsibility upon the imperial authorities. It is not a very manly thing to do if there was some justification for it. It is never heroic for a man or a nation to throw blame on others; it is especially ignoble to do so without any justification whatever. Let us grow and develop and fulfil to the highest degree our national aims and aspirations, but, in the name of Canadian manhood, let us have done with pleading the baby act, and meanly seeking to assuage our national disappointments by unfounded imputations upon the intelligence and good faith of the imperial government.